



[4910-EX-P]

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2020-0239]**

**Registration and Financial Security Requirements for Brokers of Property and Freight Forwarders; Small Business in Transportation Coalition (SBTC) Exemption Application**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the Small Business in Transportation Coalition (SBTC) seeks reconsideration of an August 14, 2013, application by the Association of Independent Property Brokers and Agents (AIPBA) for an exemption from the \$75,000 bond requirement for all property brokers and freight forwarders. FMCSA denied the AIPBA application on March 31, 2015, and treats the SBTC request as a new exemption application. FMCSA requests public comment on SBTC's application.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2020-0239 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9826 before visiting the DOT Docket Room.

Privacy Act: DOT posts public comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4325; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

## Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2020-0239), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means.

FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, “FMCSA-2020-0239” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

## **II. Legal Basis**

Under Section 32918 of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act, P.L. 112-141, 126 Stat. 405 (MAP-21), all brokers and freight forwarders subject to FMCSA’s jurisdiction must maintain \$75,000 in financial security. 49 U.S.C. § 13906(b)(3), (c)(4). Such financial security must be in the form of a surety bond or trust fund. 49 C.F.R. § 387.307(a);

49 C.F.R. § 387.403T(c). Under 49 U.S.C. § 13541(a), the Secretary of Transportation (Secretary) “shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of [49 U.S.C. Part B (Chapters 131-149)], or use this exemption authority to modify the application of a provision of [49 U.S.C. Part B (Chapters 131-149)] as it applies to such person, class, transaction, or service when the Secretary... finds that the application of that provision:

- (1) is not necessary to carry out the transportation policy of [49 U.S.C. §]13101;
- (2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and
- (3) is in the public interest.”

49 USC § 13541(a).

In a September 10, 2019, letter to FMCSA (SBTC Petition for Exemption), SBTC seeks a 5-year exemption from the \$75,000 financial security requirements at 49 U.S.C. § 13906 (b) and (c) for certain small business brokers and freight forwarders with revenues below \$15.01 million.<sup>1</sup> Section 13906 is located in 49 U.S.C. Part B (Chapter 139) and therefore may be considered within the general scope of the Agency’s exemption authority under section 13541.<sup>2</sup> The Secretary may begin a section 13541 exemption proceeding on the application of an interested party or on the Secretary’s own initiative. 49 U.S.C. § 13541(b). The Secretary may “specify the period of time during which an exemption” is effective and may revoke the exemption “to the extent specified, on finding that application of a provision of [49 U.S.C.

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<sup>1</sup> SBTC Petition for Exemption, at 10.

<sup>2</sup> SBTC styles its request as a resubmission of an exemption request pursuant to 49 U.S.C. § 31315(b)(3) and 49 C.F.R. § 381.317. Section 31315 of title 49 and 49 CFR Part 381 apply to exemptions from 49 U.S.C. Chapter 313, 49 U.S.C. § 31136 and from rules issued under those statutes, however. FMCSA therefore has no jurisdiction to entertain a resubmission of AIPBA’s exemption request under section 31315(b)(3) and section 381.317, as the requirements SBTC seeks exemption from are not within Chapter 313 or Section 31136. However, instead of dismissing SBTC’s request, FMCSA will treat SBTC’s request as a new request for exemption under section 13541 and consider it under that applicable statutory provision.

Chapters 131-149] to the person, class, or transportation is necessary to carry out the transportation policy of [49 U.S.C.] section 13101.” 49 U.S.C. § 13541(c), (d). In addition, the exemption authority provided by section 13541 “may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage [or] insurance....” 49 U.S.C. § 13541(e)(1).

The Administrator of FMCSA has been delegated authority under 49 C.F.R. § 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. § 13541.

### **III. Background**

On July 6, 2012, the President signed into law MAP-21, which included a number of mandatory, non-discretionary changes to FMCSA programs. Some of these changes amended the financial security requirements applicable to property brokers and freight forwarders operating under FMCSA’s jurisdiction. MAP-21 § 32918, (codified at 49 U.S.C. § 13906(b) and (c)). More specifically, 49 U.S.C. § 13906 (b) and (c) require brokers and freight forwarders to provide evidence of minimum financial security in the amount of \$75,000. On October 1, 2013, FMCSA issued regulations requiring brokers and freight forwarders to have a \$75,000 surety bond or trust fund in effect. 49 C.F.R. §§ 387.307(a), 387.403(c). 78 FR 60226, 60233. The 11th Circuit Court of Appeals dismissed AIBPA’s Administrative Procedure Act challenge to the rule, *AIPBA v. Secretary, U.S. Department of Transportation*, 13-15238 (11th Cir. Mar. 18, 2016), and the United States District Court for the Middle District of Florida dismissed a separate AIPBA challenge to the constitutionality of the statute. *AIPBA v. Foxx*, 5:15-cv-00038-JSM-PRL (M.D. Fla. July 15, 2015).

On December 26, 2013, FMCSA requested public comment on the August 14, 2013, AIPBA application for an exemption for all property brokers and freight forwarders from the

requirement for a \$75,000 surety bond or trust fund (78 FR 78472). Specifically, FMCSA requested comments on whether the Agency should grant or deny AIPBA's application, in whole or in part. The Agency also requested comments on how it should apply 49 U.S.C. § 13541(a)(1-3) to AIPBA's request. 78 FR at 78473.

On March 31, 2015 (80 FR 17142), FMCSA published a Federal Register notice denying AIPBA's request.<sup>3</sup> The Agency concluded that the exemption should be denied on the basis that 49 U.S.C. § 13541 does not give FMCSA the authority to essentially nullify a statutory provision by exempting the entire class of persons subject to the provision. 80 FR at 17145. Furthermore, even if the Agency had the authority to issue such a blanket exemption, AIPBA's exemption application did not meet the factors provided in section 13541 because (1) the new \$75,000 bond requirement is necessary to carry out the National Transportation Policy at 49 U.S.C. § 13101, (2) there has been no showing that the \$75,000 requirement "is not needed to protect shippers from the abuse of market power," and (3) the requested exemption is not in the public interest. *Id.* at 17147.

On Sept. 10, 2019, SBTC submitted its current request for a 5-year exemption from the \$75,000 broker/freight forwarder financial responsibility requirement for those brokers and freight forwarders with revenues under \$15.01 million.

### **Request for Comments**

FMCSA requests public comment on the SBTC exemption application. A copy of SBTC's exemption application is included in the public docket referenced at the beginning of this notice. Specifically, FMCSA requests comments on whether the Agency should grant or deny the application, in whole or in part. The Agency also requests comments on how it should apply 49 U.S.C. § 13541(a)(1-3) to SBTC's request.

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<sup>3</sup> AIPBA did not appeal FMCSA's decision as required within the 60-day limitations period in 28 U.S.C. 2344.

Commenters are encouraged to provide data or information concerning the impact of the financial security requirements and/or the impact of granting this exemption request on motor carriers, brokers, freight forwarders and shippers.

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Larry W. Minor,  
Associate Administrator for Policy.

[FR Doc. 2020-07539 Filed: 4/9/2020 8:45 am; Publication Date: 4/10/2020]